IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.338 OF 2004
ALONG WITH
COMPANY APPLICATION NO.339 OF 2004
IN
COMPANY APPLICATION NO.338 OF 2004

CA No.338/2004

In the matter of section 391 & 392 of the Companies Act, 1956;

And

In the matter of Scheme of Compromise/Aarrangement between Sharp Industries Limited and its secured, unsecured creditors and equity shareholders.

CA No.339/2004

In the matter of section 391(6) of the Companies Act, 1956;

And

In the matter of Scheme of Compromise/Arrangement between Sharp Industries Limited and its secured, unsecured creditors and equity shareholders

Sharp Industries Limited ...Applicant.

Mr. Janak Dwarkadas i/b Mr. Vijay Sharma for the applicant.

CORAM: V.M.KANADE,J.

DATE: 27th August, 2004

PC:.

1. Applicant has filed Company Application No.338 of 2004 under the provisions of section 391(1) for convening meeting of its shareholders, unsecured creditors and secured creditors who have advanced financial assistance to the applicant. The sales of the applicant - Company declined from Rs 144 crores to Rs 53 crores due to recession. As a result the Company incurred heavy losses in the year 2001. The losses gradually eroded the available resources. During the nine months ended September, 2003 the Company sales compromised mainly of job work. A reference, thereafter, was filed before BIFR. However, the same was dismissed and the appeal preferred before the Appellate Authority is still pending. The applicant, therefore, proposes a scheme for compromise/arragnement for restructuring its debts vis-a-vis secured, unsecured creditors and shareholders and the principal object of the present scheme is to match its assets and liabilities in terms of the cash inflow and cash outflow which would, in turn, provide stability to the business operations and improve the profitability of the Company. In the Company Application, in para 14, it is stated that the Financial Institutions have filed proceedings against the applicant before the Debt Recovery Tribunal.

Other suits were also filed in Civil Courts by other unsecured creditors. Criminal Proceedings were also launched under section 138 of the Negotiable Instruments Act against the applicant, its Directors and Officers. The applicant is, therefore, seeking stay of all the proceedings under the provisions of section 391(6) of the Companies Act. The said application is made with a view to ensure that if the scheme is sanctioned, it would enable the applicant - Company to restructure its assets and liabilities so that all the secured and unsecured creditors can be taken care of and, if necessary, compromise terms could be filed in all proceedings pending in Courts.

2. Company Application No.339 is taken out in Company Application No.338 of 2004 and pending the hearing and final disposal of Company Application No.338 of 2004, the applicant - Company is seeking relief of stay of Civil and Criminal Proceedings by relying on provisions of section 391(6) of the Companies Act.

3. So far as the provisions of section 391(6) are concerned, this Court in the cases of PMP Auto Industries Ltd., In re. (C.P. No. 428 of 1991) and S.S. Mirand Ltd., In re (C.P. No.515 of 1991) reported in 1994 Company Cases, Vol.804, page 289 had

an occasion to consider the scope and ambit of section 391. The learned Single Judge Shri Justice B.N. Srikrishna (as he then was) has observed on page 299 of the said Judgment as under:-

> "Thus the position in law appears to be clear. Section 391 invests the court with powers to approve or sanction a scheme of amalgamation/arrangement which is for the benefit of the company. In doing so, if there are any other things which, for effectuation, require a special procedure to be followed-except reduction of capital-then the court has powers to sanction them while sanctioning the scheme itself. It would not be necessary for the company to resort to other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme which is sanctioned by the court. Not only is section 391 a complete code as held by the courts but, in my view, it is intended to be in the nature of a "single window clearance" system to ensure that the

parties are not put to avoidable unnecessary and cumbersome procedure of making repeated applications to the Court for various other alterations or changes which might be needed effectively to implement the sanctioned scheme whose overall fairness and feasibility has been judged by the court under section 394 of the Act."

This Court also had an occasion to consider the scope of sub-section 6 of section 391 in the case of Tamil Nadu Vs. Uma Investments Pvt. Ltd. reported in 1977 Company Cases, Vol.47, page 242. From the perusal of section 391(6) the word "proceedings" which is used in the said section ordinarily would cover all civil proceedings. In the present case, the applicants are seeking an ad-interim relief or stay of criminal proceedings which are pending in other Criminal Courts. These proceedings having been instituted under section 138 of the Negotiable Instruments Act which envisages penal liability in the event of dishonour of a cheque. It is averred in the application that all the criminal proceedings which are pending are under section 138 of the Negotiable Instruments

Act.

4. Taking into consideration the scheme which is sought to be brought into effect which would result in regulating cash inflow and outflow and also take care of unsecured and secured creditors, in my view, it would be in the interest of the shareholders, unsecured creditors and secured creditors that these proceedings also are stayed for a period of 12 weeks in order to enable the applicant - Company to put its house in order. If the applicant - Company is in a position to do that by convening meetings of the equity shareholders, unsecured creditors and creditors even some via-media can be found out in the criminal proceedings which are pending in the Criminal Courts particularly those which are filed under section 138 of the Negotiable Instruments Act.

5. Under these circumstances, I am of the view that the applicant-Company is entitled for stay of all civil proceedings and criminal proceedings which are initiated under section 138 of the Negotiable Instruments Act for a period of 12 weeks. Liberty to apply for extension of stay after 12 weeks after satisfying the Court that the

Scheme of compromise/arrangement between the applicant - Company and its secured and unsecured creditors and equity shareholders has progressed in a manner which is to the satisfaction of all the parties mentioned hereinabove.

6. In the result following Order is passed:-

O R D E R

. Order in terms of the minutes of the order dated 27/8/2004 in Company Application No.338 of 2004. Minutes of the Order taken on record and marked "X".

. Company Application No.339 of 2004 is granted in terms of prayer clause (a) for a period of 12 weeks. Prayer clause (a) reads as under:-

> "(a) That pending the outcome of the various meetings of the Creditors of the Applicant Company and if the said meetings approve the scheme of compromise/arrangement by a statutory majority, pending the hearing and final disposal of the proceedings for

sanction of the said Scheme, hearing and final disposal of all proceedings pending against the Applicant, its directors, officers, civil/criminal in any court or tribunal in India or abroad be stayed and the plaintiff / Appellant / Complainants/ claimants in such proceedings be injuncted from carrying on with the said proceedings;".

. Copy of this order duly authenticated by the Company Registrar of this Court be supplied to the parties.

V.M. KANADE, J.